

(g) *Service list.* The Copyright Royalty Board will compile and distribute, to those parties who have filed a petition to participate that has been accepted by the Board, the official service list of the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Board and all parties of any change in the name or address to which service shall be made.

(h) *Service method.* During the course of a proceeding, each party must serve all motions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed. If a party is willing to accept service of a document electronically (*i.e.*, by e-mail), followed by a hard copy, first-class mail of the hard copy may be used in lieu of express mail or other expedited delivery.

§ 350.5 Time.

(a) *Computation.* To compute the due date for filing and serving any document or performing any other act directed by an order of the Copyright Royalty Board or the Board's rules:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or a day on which the weather or other conditions render the Board's office inaccessible.

(4) As used in this rule, "legal holiday" means New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President or the Congress.

(b) *Extensions.* A party seeking an extension may do so by written motion. An extension motion must state:

(1) The date on which the action or submission is due;

(2) The length of the extension sought;

(3) The date on which the action or submission would be due if the extension were allowed;

(4) The reason or reasons why the delay is unavoidable; and

(5) The justification for the amount of additional time being sought.

§ 350.6 Construction and waiver.

The regulations of the Copyright Royalty Board are intended to provide efficient and just administrative proceedings and will be construed to advance these purposes. For purposes of an individual proceeding, the provisions of this subchapter may be suspended or waived, in whole or in part, upon a showing of good cause, to the extent allowable by law.

PART 351—PROCEEDINGS

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§ 351.1 Initiation of proceedings.

(a) *Notice of commencement; solicitation of petitions to participate.* All proceedings before the Copyright Royalty Board to make determinations and adjustments of reasonable terms and rates of royalty payments, and to authorize the distribution of royalty fees, shall be initiated by publication in the FEDERAL REGISTER of a notice of the initiation of proceedings calling for the filing of petitions to participate in the proceeding.

(b) *Petitions to participate.* (1) *Royalty rate proceedings.* (i) *Single petition.* Each petition to participate filed in a royalty rate proceeding must include:

(A) The petitioner's full name, address, telephone number, facsimile number (if any), and e-mail address (if any);

(B) A description of the petitioner's significant interest in the subject matter of the proceeding; and

(C) A statement of the petitioner's intention to fully participate in the royalty rate proceeding;

(ii) *Joint petition.* Petitioners with similar interests may, in lieu of filing individual petitions, file a single petition. Each joint petition must include:

(A) The full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the petition;

(B) A list identifying all participants to the joint petition;

(C) A description of the participants' significant interest in the subject matter of the proceeding;

(D) A statement of the participants' intention to fully participate in the royalty rate proceeding; and

(E) If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and consent of the participants to represent them in the royalty rate proceeding.

(2) *Distribution proceedings.* (i) *Single petition.* Each petition to participate filed in a royalty distribution proceeding must include:

(A) The petitioner's full name, address, telephone number, facsimile number (if any), and e-mail address (if any);

(B) In a cable or satellite royalty distribution proceeding, identification of whether the petition covers a Phase I proceeding (the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners), a Phase II proceeding (where the money allotted to each category is subdivided among

the various copyright owners within that category), or both;

(C) A description of the petitioner's significant interest in the subject matter of the proceeding; and

(D) A statement of the petitioner's intention to fully participate in the royalty distribution proceeding;

(ii) *Joint petition.* Petitioners with similar interests may, in lieu of filing individual petitions, file a single petition. Each joint petition must include:

(A) The full name, address, telephone number, facsimile number (if any), and e-mail address (if any) of the person filing the petition;

(B) A list identifying all participants to the joint petition;

(C) In a cable or satellite royalty distribution proceeding, identification of whether the petition covers a Phase I proceeding (the initial part of a distribution proceeding where royalties are divided among the categories or groups of copyright owners), a Phase II proceeding (where the money allotted to each category is subdivided among the various copyright owners within that category), or both;

(D) A description of the participants' significant interest in the subject matter of the proceeding;

(E) A statement of the participants' intention to fully participate in the royalty distribution proceeding; and

(F) If the joint petition is filed by counsel or a representative of one or more of the participants that are named in the joint petition, a statement from such counsel or representative certifying that, as of the date of submission of the joint petition, such counsel or representative has the authority and consent of the participants to represent them in the royalty distribution proceeding.

(3) *Filing deadline.* A petition to participate shall be filed by no later than 30 days after the publication of the notice of commencement of a proceeding, subject to the qualified exception set forth in paragraph (d) of this section.

(4) *Filing fee.* A petition to participate must be accompanied with a filing fee of \$150 or the petition will be rejected. Payment shall be made to the Copyright Royalty Board. If a check is subsequently dishonored, the petition

will be rejected. If the petitioner believes that the contested amount of that petitioner's claim will be less than \$10,000, petitioner shall so state in the petition to participate and should not include payment of the \$150 filing fee. If it becomes apparent during the course of the proceedings that the contested amount of the claim is more than \$10,000, the Board will require payment of the filing fee at such time.

(c) *Acceptance and rejection of petitions to participate.* A petition to participate will be deemed to have been allowed by the Copyright Royalty Board unless the Board has determined that the petitioner lacks a significant interest in the proceeding or that the petition is otherwise invalid.

(d) *Late petitions to participate.* The Copyright Royalty Board may, for substantial good cause shown, and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. However, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period.

§ 351.2 Voluntary negotiation period; settlement.

(a) *Commencement; duration.* Within thirty-five business days from the date a proceeding is initiated by notice in the FEDERAL REGISTER pursuant to § 351.1(a), the Copyright Royalty Board will announce the beginning of a voluntary negotiation period and will make a list of the participants available to the participants in the particular proceeding. The voluntary negotiation period shall last three months, after which the parties shall notify the Board in writing as to whether a settlement has been reached.

(b) *Settlement.* (1) *Distribution proceedings.* To the extent that a settlement or partial settlement has been reached in a distribution proceeding, that agreement will provide the basis for a full or partial distribution.

(2) *Royalty rate proceedings.* If, in a proceeding to determine statutory terms and rates, the participating parties report that a settlement has been reached by some or all of the parties, the Copyright Royalty Board will publish the settlement in the FEDERAL REGISTER for notice and comment from those bound by the terms, rates, or other determination set by the agreement. The Board may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement if the Board concludes that the agreement does not provide a reasonable basis for setting statutory terms or rates.

§ 351.3 Controversy and further proceedings.

(a) *Declaration of controversy.* If a settlement has not been reached within the voluntary negotiation period, the Copyright Royalty Board will issue an order declaring that further proceedings are necessary. The procedures set forth at §§ 351.4, *et seq.*, for formal hearings will apply, unless the abbreviated procedures set forth in paragraphs (b) and (c) of this section are invoked by the Copyright Royalty Board.

(b) *Small claims in distribution proceedings.* (1) *General.* If, in a distribution proceeding, the contested amount of a claim is \$10,000 or less, the Copyright Royalty Board shall decide the controversy on the basis of the filing of the written direct statement by each participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement.

(2) *Bad faith inflation of claim.* If the Copyright Royalty Board determines that a participant asserts in bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in paragraph (b)(1) of this section, the Copyright Royalty Board shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

(c) *Paper proceedings.* (1) *Where used.* The procedure under this paragraph (c) will be applied in cases in which there